

E-Filed 1/6/15

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

LARRY REDIC,

No. C 08-5010 RS (PR)

Petitioner,

**ORDER EXTENDING TIME TO FILE
A NOTICE OF APPEAL;**

v.

**ORDER EXTENDING TIME TO FILE
A MOTION FOR
RECONSIDERATION**

JOHN MARSHALL, Warden,

Respondent.

INTRODUCTION

This is a closed federal habeas corpus action. The habeas petition was denied on the merits and judgment was entered in favor of respondent on December 10, 2014. Petitioner now moves to extend time to file **(I.)** a Certificate of Appealability (“COA”), which the Court construes as a motion to extend time to file a Notice of Appeal (“NOA”);¹ and **(II.)** a motion for reconsideration in this Court. (Docket No. 84.)

¹ Petitioner cannot file a request for a COA in the appellate court until he has filed a Notice of Appeal in this Court. Accordingly, the Court construes his request for an extension of time to file a COA as one for an NOA. To the extent that he asks for an extension of time to file a COA in this Court, it is DENIED as moot. In the order denying the petition, this Court declined to issue a COA.

DISCUSSION

I. Motion to Extend Time to File a Notice of Appeal

An appeal of right may be taken only by filing a valid Notice of Appeal in the district court within the time allowed by Fed. R. App. P. ("FRAP") 4. *See* FRAP 3(a)(1). The NOA must be filed within 30 days after judgment is entered. *See* FRAP 4(a)(1). Under these rules,

an NOA must be filed in this action within 30 days of December 10, 2014 (the day judgment was entered), that is, on or before January 9, 2015.

Relief from the deadline for filing a notice of appeal may be obtained by a motion in the district court under FRAP 4(a)(5) (motion for an extension of time) or 4(a)(6) (motion to reopen time to file appeal). FRAP 4(a)(5) allows a motion for an extension of time if the party requests it within thirty days of the expiration of the time to file the notice (here January 9, 2015) and shows an excusable neglect or good cause.

Petitioner's motion to extend time was signed on December 22, 2014, well before the deadline of January 9, 2015, and is therefore timely under FRAP 4(a)(5). (Though stamped as received by this Court on December 30, for purposes of the present motion the Court assumes that petitioner put the motion in the prison mail the day he signed it and uses that as the filing date under the prisoner mailbox rule. *See generally Houston v. Lack*, 487 U.S. 266, 276 (1988).) Petitioner's motion to extend time to file an NOA is GRANTED, good cause appearing.

"No extension under this rule 4(a)(5) may exceed 30 days after the expiration of the prescribed time [the prescribed time being 30 days from the date of entry of judgment] or 14 days after the date when the order granting the motion is entered, whichever is later." FRAP 4(a)(5)(C). Here, that is 30 days from January 9, 2015, or February 8, 2015. **Petitioner must file his notice of appeal on or before February 8, 2015. No further extensions of time will be granted because the Court is barred by statute from extending this deadline.**

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2 **II. Motion to Extend Time to file a Motion for Reconsideration**

3 Petitioner's motion for an extension of time to file a motion for reconsideration is
4 GRANTED. **Such motion must be filed on or before February 8, 2015.** No extensions of
5 time will be granted.

6 It is important that petitioner file his motion for reconsideration before or at the same
7 time as he files his NOA. Once the NOA is filed, this Court lacks jurisdiction to consider a
8 subsequently-filed motion for reconsideration.

9 **CONCLUSION**

10 Petitioner's motion to extend time to file a Notice of Appeal is GRANTED. His NOA
11 **must** be filed on or before February 8, 2015. No extensions of time will be granted. His
12 motion to extend time to file a motion for reconsideration is GRANTED. Such motion **must**
13 be filed on or before February 8, 2015. No extensions of time will be granted. The Clerk
14 shall terminate Docket No. 84.

15 **IT IS SO ORDERED.**

16 DATED: January 6, 2015

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18 RICHARD SEEBORG
19 United States District Judge
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